REMARKS

Claims 30-54 remain pending in the Application. Claims 1-29 and 55-88 are withdrawn. Claims 30-54 are rejected. Claims 30 and 42 are amended herein. No new matter has been added.

Claim Rejections - 35 U.S.C. §103(a)

Claims 30-31, 33-37, 39-43, 45-50, 52 and 54

The present office action states that Claims 30-31, 33-37, 39-43, 45-50, 52 and 54 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kuriya et al. (2001/0056404) hereinafter "Kuriya", in view of Leoutsarakos (2004/0039905) hereinafter "Leo", further in view of Peinado et al. (2002/0007456) hereinafter "Peinado", and further in view of McAuliffe et al. (5,838,790) hereinafter "McAuliffe". Applicants have reviewed the cited references and respectfully submit that the embodiments of the present invention as recited in Claims 30-31, 33-37, 39-43, 45-50, 52 and 54 are not taught or rendered obvious by Kuriya either alone or in combination with Leo in view of Peinado, and further in view of McAuliffe for the following reasons.

Currently amended independent Claim 30 (and similarly currently amended independent Claim 42) includes the feature, "in response to receiving said second request and said access key, transferring said instance of media content from said content source to said client system, said instance of media content being transferred in an unencrypted format." (emphasis added).

As stated on page 5 of the present Office Action, "However, the combination above [Kuriya in view of Leo in view of Peinado] does not teach the transfer of data in an unencrypted format."

Applicants respectfully agree.

Further, Applicants respectfully note that "[i]f the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed amendment" (emphasis added) (MPEP 2143.01; *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)). Moreover, "[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention" (emphasis in original; MPEP 2141.02(VI); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)).

Applicants respectfully understand each of Kuriya, Leo and Peinado to teach directly away from the claimed feature "transferring said instance of media content from said content source to said client node, said instance of media content being transferred in an unencrypted format" (emphasis added).

With respect to the statement starting on page 5 of the present Office Action, "However, the combination above does not teach the transfer of data in an unencrypted format. This would have been obvious though. Cryptography is always a balance between security and time efficiency. Therefore, at extreme ends, if one wants a quick system, he would implement a system with little or no encryption or little security. However, if one would want a very secure system, he would implement complex algorithms that would not be as time efficient. McAuliffe teaches such limitations though, throughout the reference, while still implementing file security without encryption, such as in col. 4 lines 7-13." (Emphasis added)

Further, starting at the bottom of page 6 and continuing on through page 7, the present Office Action states, "Also, at the time of the invention, it would have been obvious to one of ordinary skill in the art to combine the $$ reference. One of ordinary skill in the art would have been motivated to perform such an addition to create more security. As mentioned above, implementing security is always a balance between security and efficiency. As taught by McAuliffe in col. 3 line 65 to col. 4 line 12, sending a file unencrypted would allow for efficient data transmission." (Emphasis added)

Applicants respectfully submit the argument presented at the bottom of page 6 does not support the conclusion reached in the same paragraph. Specifically, Applicants respectfully submit, with respect to **only** the **fact statements provided** in the paragraph, if **implementing security** is always a **balance** between **security** and **efficiency**, and a user were motivated **to create more security**; then it would logically follow that an **amount of efficiency** would be sacrificed for the sake of creating more security.

However, in the rejections starting at the bottom of page 6 and continuing on through page 7, the present Office Action reaches an improper conclusion that does not follow the Office Actions own stated logic, "As taught by McAuliffe in col. 3 line 65 to col. 4 line 12, sending a file unencrypted would allow for efficient data transmission." (Emphasis added)

For this reason, Applicants respectfully submit a prima facie case of obviousness has not been made and that Claims 30 and 42 are in condition for allowance.

Moreover, with respect to the Office Actions stated understanding of McAuliffe, Applicants have reviewed McAuliffe including col. 3 line 65 to col. 4 line 13, and do not understand McAuliffe to " teaches such limitations though, throughout the reference, while still implementing file security without encryption" or "sending a file unencrypted", as the present Office Action states.

In contrast, Applicants understand McAuliffe to teach and render obvious Advertisement authentication system in which advertisements are downloaded for off-line display. Further, Applicants understand McAuliffe to be concerned with static file information such as: ad tampering, modification or replacement as well as advertisement output for billing the advertiser, etc.

Thus, as Applicants understand McAuliffe to teach and render obvious the importance of tracking an ad, statistics such as whether or not it was watched by a user and whether or not the ad was modified or deleted. However, Applicants respectfully submit that by the well known goals of advertisement, advertisers do not wish to contain an advertisement, but instead hope to

disseminate the ads as widely as possible. At the same time, it is in the advertisers best interest to get the ad out as cheaply as possible. As such, many well-known advertisement models are based on number of viewers reached. These types of models are well known and are used by search engines, television sweeps weeks, and the like. In other words, Advertisers pay more to be seen more.

With respect to McAuliffe, Applicants respectfully submit McAuliffe, following the well known advertisement model, is focused on billing an advertiser correctly for unmodified ads that were watched.

As such, Applicants respectfully disagree with the Office Actions understanding of McAuliffe including col. 3 line 65 to col. 4 line 13. Specifically, McAuliffe states, "As one alternative to the use of a hashing function, the advertisement authentication system of the present invention can be implemented **using encryption alone**. Thus, **rather than using an encrypted fingerprint** of a file for authentication purposes, **the file itself** could simply be transmitted to or from the client computer, and stored on the client computer's hard disk, **in encrypted form**. However, **file encryption** prevents use of effective data file compression, since good encryption algorithms produce highly entropic (and thus virtually incompressible) cyphertext. **Encrypting a file fingerprint** (which is orders of magnitude smaller than the file itself) and sending this along with the unencrypted, compressed file allows for efficient data transmission while retaining file security."(Emphasis Added)

Moreover, in the paragraph previous to that cited by the present Office Action, McAuliffe clearly states, "To encrypt the fingerprints and statistics file, a symmetric block encryption function is used in the preferred embodiment of the present invention. The advertisement and statistics file fingerprints are encrypted prior to transmission so that alteration or substitution of a file while it is en route cannot be masked with a consistent alteration of the file's fingerprint." (Emphasis added)

Therefore, Applicants do not understand McAuliffe to teach "such limitations though, throughout the reference, while still implementing file security without encryption" or "sending a

file unencrypted", as the present Office Action states. Instead, Applicants respectfully submit that it is not the advertisement, but instead the statistics about the advertisement or the "statistics file fingerprint" that is the subject matter to be protected. Moreover, Applicants respectfully point out that McAuliffe clearly provides encryption as the means of protecting the statistics files.

As such, Applicants respectfully state that based on the above reasoning, neither Kuriya alone nor in combination with Leo, Peinado, and McAuliffe, teaches or renders obvious the features of Claims 30 and 42. As such, Applicants respectfully submit that Claims 30 and 42 are not taught or rendered obvious by Kuriya in view of Leo, further in view of Peinado and further in view of McAuliffe under 35 U.S.C. §103(a), and that Claims 30 and 42 are in condition for allowance.

In addition, currently amended independent Claim 30 (and similarly currently amended independent Claim 42) also includes the features, "activating a compliance mechanism upon receiving said instance of media content, said compliance mechanism for enforcing compliance with a usage restriction applicable to said instance of media content in response to said client node receiving said instance of media content in said unencrypted format;

controlling a data path of a kernel-mode media device driver of said client node with said compliance mechanism by diverting a first data pathway used by said media content present application to a second data pathway governed by said compliance mechanism; and

directing every said instance of media content received at said client system in said unencrypted format from said kernel-mode media device driver to a media device driver coupled with said compliance mechanism, via said second data pathway governed by said compliance mechanism, for selectively restricting output of said instance of media content." (emphasis added).

Support for the Claimed feature can be found throughout the Figures and Specification including, but not limited to, Figures 3 and 5A-5C, page 17 lines 50-55, page 21 line 34 to page 22 line 5, page 23 lines 18-35 and the last paragraph of the description of Figures 3 and 5 in the Specification.

Applicants have reviewed Kuriya and do not understand Kuriya to teach or render obvious "controlling a data path of a kernel-mode media device driver of said client node with said compliance mechanism by diverting a first data pathway used by said media content present application to a second data pathway governed by said compliance mechanism; and directing every said instance of media content received at said client system in said unencrypted format from said kernel-mode media device driver to a media device driver coupled with said compliance mechanism, via said second data pathway governed by said compliance mechanism, for selectively restricting output of said instance of media content." (Emphasis added)

Similarly, Applicants have reviewed Leo and do not understand Leo to teach or render obvious "controlling a data path of a kernel-mode media device driver of said client node with said compliance mechanism by diverting a first data pathway used by said media content present application to a second data pathway governed by said compliance mechanism; and directing every said instance of media content received at said client system in said unencrypted format from said kernel-mode media device driver to a media device driver coupled with said compliance mechanism, via said second data pathway governed by said compliance mechanism, for selectively restricting output of said instance of media content." (Emphasis added)

Moreover, Applicants have reviewed McAuliffe and do not understand McAuliffe to teach or render obvious "controlling a data path of a kernel-mode media device driver of said client node with said compliance mechanism by diverting a first data pathway used by said media content present application to a second data pathway governed by said compliance mechanism; and directing every said instance of media content received at said client system in said unencrypted format from said kernel-mode media device driver to a media device driver coupled with said compliance mechanism, via said second data pathway governed by said compliance mechanism, for selectively restricting output of said instance of media content." (Emphasis added)

Regarding Peinado, Applicants respectfully submit that Peinado does not overcome the shortcomings of Kuriya alone or in combination with Leo, and McAuliffe. That is, Applicants

do not understand Peinado to teach or render obvious the feature, "controlling a data path of a kernel-mode media device driver of said client node with said compliance mechanism by diverting a first data pathway used by said media content present application to a second data pathway governed by said compliance mechanism; and directing every said instance of media content received at said client system in said unencrypted format from said kernel-mode media device driver to a media device driver coupled with said compliance mechanism, via said second data pathway governed by said compliance mechanism, for selectively restricting output of said instance of media content." (emphasis added).

In contrast, Applicants understand Peinado to teach at col. 14 line 66 through col. 15 line 8, "Preferably, such rendering application 34 examines the digital content 12 associated with the file name and determines whether such digital content 12 is encrypted in a rights-protected form (Step 503, 505). If not protected, the digital content 12 may be rendered without further ado (step 507). If protected, the rendering application 34 determines from the encrypted digital content 12 that the DRM system 32 is necessary to play such digital content 12. Accordingly, such rendering application 34 directs the user's computing device to run the DRM system 32 thereon (step 509)." (emphasis added).

For this reason, Applicants respectfully submit that Peinado does not teach or render obvious the feature, "directing every said instance of media content received at said client system in said unencrypted format from said kernel-mode media device driver to a media device driver coupled with said compliance mechanism, via said second data pathway governed by said compliance mechanism, for selectively restricting output of said instance of media content."

As such, Applicants respectfully submit that Claims 30 and 42 are not taught or rendered obvious by Peinado. Furthermore, Applicants respectfully state that based on the above reasoning, neither Kuriya alone nor in combination with Leo, Peinado, and McAuliffe, teaches or renders obvious the features of Claims 30 and 42. As such, Applicants respectfully submit that Claims 30 and 42 are not taught or rendered obvious by Kuriya in view of Leo, further in view of Peinado and further in view of McAuliffe under 35 U.S.C. §103(a) .

With respect to Claims 31, 33-37, 39-41, 43, 45-50, 52 and 54, Applicants respectfully state that Claims 31, 33-37, 39-41, 43, 45-50, 52 and 54 depend from the allowable Independent Claims 30 and 42 and recite further features of the present claimed invention. Therefore, Applicants respectfully state that Claims 31, 33-37, 39-41, 43, 45-50, 52 and 54 are also allowable as pending from allowable base Claims.

Claims 32 and 44

Claims 32 and 44 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kuriya combination as applied above, and further in view of Ferguson (2002/0065849). Applicants have reviewed the cited references and respectfully submit that the embodiments of the present invention as recited in Claims 32 and 44 are not taught or rendered obvious by Kuriya either alone or in combination with Leo, Peinado, and McAuliffe, and further in view of Ferguson for the following reasons.

Applicants respectfully state that Claims 32 and 44 depend from the allowable Independent Claims 30 and 42 and recite further features of the present claimed invention. Therefore, Applicants respectfully state that Claims 32 and 44 are also allowable as pending from allowable base Claims. Thus, the rejection under 35 U.S.C. § 103(a) with respect to Claims 32 and 44 is moot.

Claims 32(38) and 51

Claims 32 and 51 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the Kuriya combination as applied above, and further in view of Radinsky (5,668,996). Applicants have reviewed the rejection and have understood the body of the rejection to address Claim 38 and not Claim 32. As such, Applicants have addressed the Claim rejection in the body and assumed the Claim 32 reference to be a clerical error.

Applicants have reviewed the cited references and respectfully submit that the embodiments of the present invention as recited in Claims 38 and 51 are not taught or rendered

obvious by Kuriya either alone or in combination with Leo, Peinado, and McAuliffe and further in view of Radinsky for the following reasons.

Applicants respectfully state that Claims 38 and 51 depend from the allowable Independent Claims 30 and 42 and recite further features of the present claimed invention. Therefore, Applicants respectfully state that Claims 38 and 51 are also allowable as pending from allowable base Claims. Thus, the rejection under 35 U.S.C. § 103(a) with respect to Claims 38 and 51 is moot.

Claim 53

Claim 53 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kuriya combination as applied above, and further in view of McGillis (7,032,228). Applicants have reviewed the cited references and respectfully submit that the embodiments of the present invention as recited in Claim 53 is not taught or rendered obvious by Kuriya either alone or in combination with Leo, Peinado, and McAuliffe and further in view of McGillis for the following reasons.

Applicants respectfully state that Claim 53 depends from the allowable Independent Claim 42 and recites further features of the present claimed invention. Therefore, Applicants respectfully state that Claim 53 is also allowable as pending from an allowable base Claim. Thus, the rejection under 35 U.S.C. § 103(a) with respect to Claim 53 is moot.

Conclusion

In light of the above-listed remarks, Applicant respectfully requests allowance of Claims 30-54.

The Examiner is urged to contact Applicant's undersigned representative if the Examiner believes such action would expedite resolution of the present Application.

Respectfully submitted,

WAGNER BLECHER LLP

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/John P. Wagner, Jr./

John P. Wagner, Jr.
Reg. No. 35,398

WESTRIDGE BUSINESS PARK
123 WESTRIDGE DRIVE
WATSONVILLE, CALIFORNIA 95076
(408) 377-0500